

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

2008 JAN 30 PM 12:42
STEPHEN D. LUCHO, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

KENT L. TAYLOR)
Plaintiff,)

-vs-

Hon. _____
Cause No. **1:08CV0040WL**

THE UNITED STATES DEPARTMENT)
OF THE TREASURY AND THE)
INTERNAL REVENUE SERVICE)
Defendants.)

COMPLAINT

COMES NOW, Plaintiff, Kent Taylor, ("Taylor"), Staff Sergeant U.S. Air Force (Reserve), 1915 Mathias Street, Fort Wayne, Indiana 46815, through counsel, Carson Boxberger LLP, 1400 One Summit Square, Fort Wayne, Indiana 46802, for his complaint against Defendants, The United States Department of the Treasury ("Treasury") and The Internal Revenue Service ("IRS"), Fort Wayne Post of Duty of the Indianapolis Field Office, (collectively, "Defendants") alleges and says: Defendants denied him access to his employment record in violation of 5 U.S.C. § 552a *et seq.*, The Privacy Act and 5 U.S.C. § 552 *et seq.*, The Freedom of Information Act, as more fully described below.

JURISDICTION AND VENUE

- a. Subject matter jurisdiction of this action arises under 28 U.S.C. § 1331 and 1367;
- b. The Court has personal jurisdiction over the Defendants because the named Defendants conduct business within this district; and
- c. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c).

FACTS COMMON TO ALL CLAIMS

1. At all times relevant to this Complaint:

a. Defendants were “agencies” of the United States within the meaning and intent of 5 U.S.C. §552a(a)(1) and 5 U.S.C. §552(f)(1);

b. Taylor, a white male, date of birth: February 11, 1965, age 42, is an “individual” within the meaning and intent of 5 U.S.C. §552a(a)(2);

c. Taylor was employed as a Special Agent for the IRS, beginning August 14, 2003, Indianapolis Field Office, with duty at Fort Wayne, Allen County, Indiana beginning February 2004; and

d. The Defendants “maintain[ed]”, within the meaning and intent of 5 U.S.C. §552a(a)(3), an employment record about Taylor, including performance reports, as an agency “record”, as defined by 5 U.S.C. §552a(a)(4), within a “system of records”, as defined by 5 U.S.C. §552a(a)(5).

2. On February 13, 2006, Supervisory Special Agent Tracey D. Montano (“Montano”) and Special Agent-in-Charge Scott F. Rebein (“Rebein”) effectively and unlawfully terminated Taylor’s employment with the IRS for alleged “poor performance”.

3. The allegation of “poor performance” against Taylor was a ruse or subterfuge for Rebein’s and Montano’s willful and knowing termination of Taylor’s employment because of his military obligations and affiliation, age and gender.

4. On February 14, 2006, Taylor provided to Defendants, through its employees Rebein and Montano, a written request under the Privacy Act, 5 U.S.C. § 552a *et seq.* and the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*, for any and all documentation used to justify Taylor’s termination.

5. Defendants:

a. Ignored and/or refused Taylor's request for a copy of these materials in violation of 5 U.S.C. § 552(a)(3), Freedom of Information Act, without submitting the request to a proper authority for denial.

b. Refused/failed to provide written notice to Taylor of unusual circumstances warranting a request for additional time or alternative time frame for processing the request under 5 U.S.C. § 552(a)(6)(B).

c. By the Defendants refusal/failure to provide Taylor access to his record or release certain information in his record, Taylor is deemed to have exhausted his administrative remedies within the meaning and intent of 5 U.S.C. § 552(a)(6)(C).

6. Defendants refused to give Taylor access to his record or release certain information in his record to him in violation of The Privacy Act, 5 U.S.C. § 552a(d)(1).

7. On February 22, 2006, Taylor requested a copy of his performance reports from his official employment record under the Privacy Act, 5 U.S.C. § 552a *et seq.* and the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*

8. In response to his February 22, 2006 request, Defendants falsely reported, "To date the approximate cost of searching and duplicating the [requested] materials has been estimated at \$4,000.00", which cost is grossly overstated.

9. By arbitrarily, capriciously and improperly withholding and refusing/failing to provide the requested documents within the time prescribed by 5 U.S.C. § 552 (a)(6)(A)(i) and by falsely asserting that the fee to search for and duplicate the requested materials was \$4,000, Defendants,

denied Taylor's FOIA and Privacy Act requests, within the meaning and intent of 5 U.S.C. §552 (a)(6)(C)(i) and 5 U.S.C. §552a(d).

COUNT I

Violation of the Privacy Act

10. Plaintiff hereby incorporates by reference, each and every allegation set forth in paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. The Defendants intentionally and willfully refused to give Taylor access to his record or release certain information in his record to him in violation of 5 U.S.C. §552a(d)(1).

12. The Defendants' intentional and willful acts:

a. Violated Taylor's rights under The Privacy Act, 5 U.S.C. §552a(d)(1) and §552a(e)(1),(2), and (5).

b. Taylor is entitled to the civil remedies provided under the Privacy Act, 5 U.S.C. §552a(g)(3) and (4).

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor against the Defendants awarding Taylor:

a. Compensatory damages including prejudgment interest, in an amount to be determined at trial, which Taylor prays for leave to amend and state;

b. Costs and fees, including award of attorney fees under 5 U.S.C. §552a, expert witness fees, and other reasonable costs and expenses associated with asserting Plaintiff's rights under 5 U.S.C. §552a(g)(3) (A) and (B) and 5 U.S.C. §552a(g)(4)(A) and (B), which Taylor prays for leave to amend and state; and

c. All other equitable relief in the premises to which the Plaintiff is entitled, pursuant to Fed.R.Civ.P. Rule 54(c).

COUNT II

Violation of the Freedom of Information Act.

13. Plaintiff hereby incorporates by reference, each and every allegation set forth in paragraphs 1-12 of the Complaint as though fully set forth herein.

14. The Defendants violated 5 U.S.C. § 552(a)(3) by Defendant's refusal to release his employment record with Defendants within the time limits prescribed by 5 U.S.C. § 552(a)(6)(A) they obstructed the prosecution of Taylor's claim against the Defendants and his defense to the wrongful termination of his employment.

15. The Defendants refused/failed to provide written notice to Taylor of unusual circumstances warranting a request for additional time or alternative timeframe for processing the request under 5 U.S.C. § 552(a)(6)(B). By the Defendants refusal/failure to make such a request, Taylor is deemed to have exhausted his administrative remedies within the meaning and intent of 5 U.S.C. § 552(a)(6)(C).

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor against the Defendant, awarding Taylor:

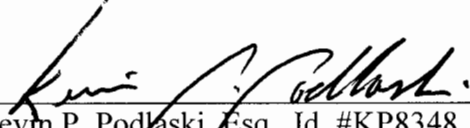
a. Production of the requested employment records by Defendants at no cost to him for researching and copying the records;

b. Costs, fees, attorney fees (under 5 U.S.C. § 552(a)(4)(E)), and other reasonable expenses for bringing this action; and

c. All other equitable relief in the premises to which the Plaintiff is entitled, pursuant to Fed.R.Civ.P. Rule 54(c).

Respectfully submitted,

CARSON BOXBERGER LLP


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